



CALIFORNIA STATE PERSONNEL BOARD

801 Capitol Mall • Sacramento, CA 95814

NOTICE OF EFFECTIVE DATE OF RENUMBERED REGULATIONS

DATE: February 16, 2000

TO: ALL STATE AGENCIES AND EMPLOYEE ORGANIZATIONS
ALL CHIEFS OF ADMINISTRATIVE SERVICES, CONTRACTING
OFFICERS, PERSONNEL OFFICERS, AND CHIEF COUNSELS

SUBJECT: Renumbering of Regulations on Personal Services Contracts
Effective February 4, 2000

This memorandum is to advise you that as a follow-up to the establishment of California Code of Regulations, Title 2 (Code) Sections 547.60-547.68, governing the State Personnel Board's (SPB) review of personal services contracts, SPB has taken administrative action to: (1) extract the definition section from existing Article 1, Procedures for Reviewing Personal Services Contracts Proposed or Entered Into Pursuant to Government Code §19130(b), thereby establishing Section 547.59 as the sole regulation under new Article 1, Definitions; and (2) to renumber existing Articles 1-5 as new Articles 2-6, respectively.

The intent of this nonsubstantive change is to add clarity to and facilitate the application of regulations governing SPB's review of personal services contracts. The change is needed since Section 547.59(b) refers to Government Code Section 19130(a) and is therefore inappropriate for an Article entitled "Procedures for Reviewing Personal Services Contracts Proposed or Entered Into Pursuant to Government Code §19130(b)," as well as the fact that definitions are not procedures. This change became effective on February 4, 2000. A copy of the final regulations is attached hereto. These redesignated regulations will be printed in the Code later this year; the change will be reflected in the Department's website immediately.

Questions regarding this action should be directed to Steve Unger at (916) 654-0842 or TDD (916) 653-1498.

LAURA M. AGUILERA, Chief
Personnel Resources and
Innovations Division

Attachment: Text of Regulations



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State Personnel Board Regulations Governing Board Review of Personal Services Contracts

For this amendment, text added to the regulations is indicated by underline and text deleted from the regulations is indicated by strikethrough.

Title 2. ADMINISTRATION

Division 1. Administrative Personnel

Chapter 1. State Personnel Board

Subchapter 1.5. Personal Services Contracts

Article 1. Definitions

§ 547.59. Definition of a Personal Services Contract.

- (a) A "Personal Services Contract" is defined as any contract, requisition, purchase order, etc. (except public works contracts) under which labor or personal services is a significant, separately identifiable element. The business or person performing these contractual services must be an independent contractor that does not have status as an employee of the State.
- (b) A "cost-savings based Personal Services Contract" is any Personal Services Contract proposed to achieve cost savings and subject to the provisions of Government Code Section 19130(a).

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 19130, Government Code.

Article 4 2. Procedures for Reviewing Personal Services Contracts Proposed or Entered into Pursuant to Government Code §19130(b)

§547.60. Standard and Control for Approval of Contracts.

When a state agency requests approval from the Department of General Services for a contract let under Government Code Section 19130(b), the agency shall include with its contract transmittal a written justification that includes specific and detailed factual information that demonstrates how the contract meets one or more of the conditions specified in Government Code Section 19130(b).

Note: Authority cited: Section 10337(a), Public Contract Code; and Section 18701, Government Code. Reference: Section 19130, Government Code.

§ 547.61. Employee Organization's Request for Review.

(a) Any employee organization that represents state employees may request that the board review a contract proposed or executed by a state agency pursuant to Government Code Section 19130(b) by filing with the board and serving upon the state agency a written request for review. The employee organization's request for review shall identify the contract to be reviewed and include the following:

(1) specific and detailed factual information that demonstrates how the contract fails to meet the conditions specified in Government Code Section 19130(b); and

(2) documentary evidence and/or declarations in support of the employee organization's position.

(b) The employee organization shall file a proof of service with the board that states when and how it served a copy of its request for review upon the state agency.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 19130 and 19132, Government Code; and Section 10337, Public Contract Code.

§ 547.62. State Agency's Response.

Within 7 days after the state agency receives a copy of the employee organization's request for review, the state agency shall serve a copy of that request upon the contractor(s) to the disputed contract. Within 15 days after the state agency receives a copy of the employee organization's request for review, the state agency shall file with the board and serve upon the employee organization:

(a) a copy of the proposed or executed contract; and

(b) the state agency's written response to the employee organization's request for review, which shall include:

(1) specific and detailed factual information that demonstrates how the contract meets one or more of the conditions specified in Government Code 19130(b); and

(2) documentary evidence and/or declarations in support of the state agency's position.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 19130 and 19132, Government Code; and Section 10337, Public Contract Code.

§ 547.63. Employee Organization's Reply.

Within 5 days after it receives from the state agency a copy of the contract and the state agency's response, an employee organization may file with the board and serve upon the state agency a written reply to the state agency's response.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 19130 and 19132, Government Code; and Section 10337, Public Contract Code.

Article 2 3. Supplemental Procedures for Reviewing Personal Services Contracts Executed Under Either Government Code §19130(a) or §19130(b).

(There are no changes under this Article heading)

Article 3 4. Procedures for Appealing an Executive Officer's Decision Approving or Disapproving a Contract Under Government Code §19130(a) or §19130(b) to the Board

(There are no changes under this Article heading)

Article 4 5. Procedures that Apply to Review Proceedings for Contracts Executed Under Government Code §19130(a) or §19130(b)

(There are no changes under this Article heading)

Article 5 6. Rules that Apply to Contracts under Government Code §19130(a)

§ 279.2 § 547.69. Undercut of State's Wage in Cost-Savings Based Contracts.

When a Personal Services Contract is based on cost savings, a contractor's wages shall be at or above the industry's level and shall not undercut the State's pay rate for comparable work by more than 15%, except that if in a nonmetropolitan area of the State the contractor's rate of pay is more than 15% below the State rate, the contract may be approved if the contractor's rate of pay is closer to the State rate than it is to the comparable industry rate in the local area. In no case shall a contractor's wages be more than 25% below the State's pay rate. Comparison of wages for this purpose shall not include the cost of benefits.

(a) Comparison of the contractor's and State's hourly rates will be made as follows:

(1) For contracts of one year or less duration, comparison shall be to the first step of the salary range of the class designated as the type of work performed by the Personal Services Contract except for classes with a special in-grade salary adjustment (SISA). In this case, comparison shall be made to the midpoint between the first and second steps.

(2) For contracts with durations of over one year up to two years, comparison shall be to the midpoint between the first and second steps of the salary range of the class designated as the type of work performed by Personal Services Contract except for classes with a SISA. Comparison in this case shall be made to the second step.

(3) For contracts with durations of over two years, comparison shall be to the second step of the salary range of the class designated as the type of work performed by Personal Services Contract.

(b) Cost-savings based Personal Services Contracts with duration of more than one year shall contain a clause indicating that in the event of an increase in the State's pay rates, the contractor's wage rate will be reviewed and adjusted in subsequent years of the contract so as not to exceed the relationship with State and industry rates identified in the first paragraph of this section.

(c) The term "industry rate" as used in this section means the prevailing rate of pay for the type of work in question in the local area where the contract would be let, as measured by reliable and statistically representative wage surveys such as those conducted by the Bureau of Labor Statistics or the Department of Industrial Relations.

NOTE: Authority cited: section 18701, Government Code. Reference: Section 19130(a)(2).

§ 279.3 § 547.70. Affirmative Action Impact.

(a) For a department to be able to consider cost-savings based contracts, all of the following equal employment/affirmative action criteria must be met:

(1) The contract will not impact a key position in an affirmative action target class or a key location for affirmative action hiring.

(2) The department is making reasonable progress toward meeting affirmative action goals and timetables identified by the department under the provisions of Government Code Section 19797.

(3) The department can continue to make reasonable progress toward meeting affirmative action goals and timetables absent the positions affected by the contract.

(4) The contractor is in compliance with the statutes and regulations administered by the Department of Fair Employment and Housing.

(b) An "affirmative action target class" as used in this section is defined as any class of positions which:

(1) a department has identified for focused recruitment purposes because there is underutilization as defined by Government Code Section 19791(c);

(2) has entry-level minimum qualifications; and

(3) has at least five vacancies anticipated during the year.

(c) A position in an affirmative action target class or a location for affirmative action hiring that is specifically identified in the department's most recent affirmative action plan as required by Government Code Section 19797 is considered to be a "key position" or "key location."

(d) "Reasonable Progress" as used in this rule is defined as hiring that is proportionately at least equal to overall hiring in the State civil service for the occupation covered by the contract.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 11135-11139.5, 19130(a)(4), 19130(a)(8), 19790, 19791, 19793 and 19797, Government Code; and Section 1431, Labor Code.

§ 279.4 § 547.71. Amount of Savings.

(a) Savings generated through cost-savings based personal services contracting must justify the size and duration of the contracting agreement. To do so, such contracts must meet one of the following criteria:

(1) Achieve a savings of 10% or more compared to the cost of performing the same function within the civil service over the duration of the contract; or

(2) Achieve a savings of at least \$50,000, in terms of 1988 dollars, per year compared to the cost of performing the same function within the civil service over the duration of the contract, provided that the savings equal at least 5% of the comparable civil service cost. The \$50,000 standard shall be adjusted at the beginning of each fiscal year to reflect changes in the California Consumer Price Index as reported by the Department of Industrial Relations, and the adjusted figure shall be communicated by Board staff to all departments.

(b) Such savings need not be attained during each year of a multi- year contract, providing the overall savings meet one of the aforesated requirements.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 19130(a)(5) and 19130(a)(6), Government Code.